



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, FIRST SESSION

Vol. 157

WASHINGTON, TUESDAY, MAY 3, 2011

No. 58

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. MCCLINTOCK).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
May 3, 2011.

I hereby appoint the Honorable TOM MCCLINTOCK to act as Speaker pro tempore on this day.

JOHN A. BOEHNER,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 5, 2011, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes each, but in no event shall debate continue beyond 11:50 a.m.

CONSTITUTIONAL FUNDAMENTALISM

The SPEAKER pro tempore. The Chair recognizes the gentleman from Illinois (Mr. QUIGLEY) for 5 minutes.

Mr. QUIGLEY. On the first day of this Congress, Members took turns reading the Constitution aloud on the floor of this House. It was a worthwhile exercise.

However, some parts were omitted. There was no recital of the Amendment that established prohibition or the clause requiring fugitive slaves to be returned to their owners, or the one equating slaves with three-fifths of a

human being. I guess nobody wanted to be the one who was stuck reading those parts, and I can understand that.

But it got me thinking that, lately, there has been a lot of talk about the Constitution, and that's a good thing. The Constitution is our national charter. It protects our basic freedoms, it grants power to the government, and puts limits on those powers.

All of us in this body took an oath to support it. We should talk a lot about the Constitution, but we should talk about it the right way. Some of my colleagues here seem to think that all we have to do is read the Constitution together and we will all see the light; that the little words on the page will answer all of our questions. For them, the Framers had all the answers. I guess that's the real reason they didn't want to read the embarrassing parts out loud on the House floor.

To do that would be to admit that the Framers got some things wrong, that their document was a first draft of liberty, a blueprint for justice, not the last word.

Some call this way of thinking constitutional fundamentalism. When it comes to the Constitution, fundamentalism is misguided. Let me explain why.

No one doubts that some parts of the Constitution are meant to be read literally and rigidly: every State gets two Senators. You have to be at least 25 years old to be elected to Congress. Cut and dried.

But in many of the most important passages of the Constitution, the Framers deliberately used broad, open-ended language because they wanted their words to be read flexibly as times changed. Freedom of speech, due process of law—these terms don't define themselves.

The Fourth Amendment protects the right of people against unreasonable searches and seizures. The Eighth Amendment outlaws cruel and unusual

punishment. What makes a search unreasonable or a punishment cruel? The document itself doesn't tell us.

The constitutional fundamentalists tell us we should interpret the words of the Constitution as they were understood at the time they were written, more than 200 years ago, but they can't really mean that. At that time, all felonies were subject to the death penalty and flogging was a common punishment for crime. Today, we consider such punishments cruel and unusual.

The words the Framers chose are not just broad and open-ended. More importantly, they express basic values. To enforce basic values, you need to make value judgments. And value judgments change as the world changes, even when the underlying values stay the same. The Supreme Court has always understood this.

Almost 200 years ago, the great Chief Justice John Marshall made clear that the Court was going to read the broad phrases of the Constitution differently than it might read a tax statute or bailing code.

Marshall wrote: "If we apply this principle of construction to any of the powers of government, we shall find it so pernicious in its operation that we shall be compelled to discard it."

Marshall and his successors on the High Court understood that when we freeze the meaning of the Constitution in place, we limit our capacity to make progress as a people.

Progress hasn't come easy. It wasn't until the 1940s that the Court applied the First Amendment's establishment clause to State and local governments, ensuring the separation of church and State. It wasn't until the 1950s in *Brown v. Board of Education* that the Court declared government-sponsored racial segregation unconstitutional. Not until the 1960s did the Court finally represent the principle of one person, one vote. And not until the 1970s did the Court enforce constitutional equality for women.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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